Thomas A. Farinella (TF-8309)
The Law Office of Thomas A. Farinella, P.C.
Rannylin S. Dalley
R.S. DALLEY, PLLC (RD-5809
260 Madison Avenue, 8th
New York, New York 10016
(917) 319-8579
Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

---X **1:16-cv-7164**

NICHOLAS S. ZOULLAS,

ECF CASE

PLAINTIFF(S),

- against -

COMPLAINT
JURY TRIAL DEMANDED

STACY CLIETT, TODD H. STEPHENS, LANTANA SELF STORAGE a/k/a KEEPERS SELF STORAGE, LANTANA, LLC, PUBLIC STORAGE AND DANIEL HYATT STORAGE,

DEFENDANT(S).

---X

Plaintiff, Nicholas S. Zoullas, by and through her attorney THOMAS A. FARINELLA, ESQ. and RANNYLIN S. DALLEY, ESQ., for his Complaint against Defendants**,** alleges as follows:

PARTIES AND JURISDICTION

1. Plaintiff, Nicholas S. Zoullas is a resident in the city and state of New York (herein “Plaintiff”).

2. Defendant, Stacy Cliett (“Cliett”), is an individual who resides in Lantana, Florida.

3. Defendant Todd H. Stephens (“Stephens”) is an individual who resides in Lantana, Florida.

4. Defendant, Public Storage ("Public Storage") is a California corporation that does business is New York and Florida.

5. Defendant, Daniel Hyatts ("Hyatts") a Storage is a business that is located in Florida.

6. Defendant, Lantana Self Storage, a/k/a, Keepers Self Storage – Lantana, LLC ("Keepers") is a business located in Forth Worth, Fl.

7. The matter in controversy exceeds the sum or value $75,000.00 exclusive of interest and costs.

8. This Court has jurisdiction of this action pursuant to 28 U.S.C. § 1332(a)(1).

NATURE OF THE ACTION

9. Plaintiffs bring this civil action: (A) for a declaratory judgment against all Defendants that Plaintiff is the custodian and owner of artwork in the possession of all Defendants; (B) for a declaratory judgment against all Defendants that the Plaintiff is co-owners and custodian of all the artwork possessed by Defendants; and (C) judgment for monetary and punitive damages against Defendants Cliett and Stephens.

10. This Court has jurisdiction under 28 U.S.C. § 1332 (diversity jurisdiction) and the amount in controversy exceeds $75,000.00;

11. This Court has personal jurisdiction over Defendants in that Defendants reside and/or do business in this District. In addition, a substantial part of the acts complained of herein occurred in this District.

12. Venue is proper in the Southern District of New York because Defendants do business and/or can be found in this District.

13. All conditions precedent to the filing of this Complaint have occurred or have

been performed.

FACTS COMMON TO ALL CLAIMS FOR RELIEF

14. Mr. Nicholas Zoullas ("Plaintiff") is the owner and custodian of a comprehensive array of artwork in where an ownership dispute has arisen regarding certain works of art in which Naxos Art, Inc. ("Naxos") claims ownership. Naxos is a company based in the British Virgin Islands and holds artwork for purposes of long-term investment, by way of shares that are held for a trust. Mr. Anthony Cashen is the director of Naxos.

15. Plaintiff is the owner of certain art work and the custodian of the subject artwork alleged to be owned by Naxos. Moreover, he is also the agent for Naxos and handles sophisticated and complex art acquisition as well as the consignment of sale for the benefit of himself and Naxos. This is memorialized in the "Custodian Agreement" between Plaintiff and Naxos, which was fully executed on or about December 16, 2008. Throughout the years, the Custodian Agreement was updated whenever Plaintiff acquired new artwork. Naxos commenced an action against Plaintiff due to Plaintiff's inadvertent sale of a piece of art Naxos claims it owns.

16. This inadvertent sale provoked a massive, yet easily explainable, misunderstanding between Plaintiff and Naxos regarding missing artwork, and more importantly, his role and function as custodian and agent for Plaintiff. Nevertheless, this correctable confusion resulted in Naxos' unilateral termination of the Custodian Agreement on or about May 3, 2016, and ultimately culminated into Naxos filing an OSC for preliminary injunction and TRO against Mr. Zoullas on June 17, 2016 in the New York County Supreme Court under Index#: 653223/2016 ("Action"). On June 23, 2016, through counsel, Plaintiff assured

Naxos and the Court that Plaintiff was temporarily enjoined from selling, loaning, transferring, pledging as collateral, encumbering, assigning, gifting, and/or disposing of, [or anything in similar vein], any action with the subject artwork. The parties also agreed that pending outcome of the July 21, 2016 hearing, Plaintiff was enjoined from using, transferring, gifting, or otherwise disposing of any of the sale proceeds regarding the subject artwork.

17. The parties convened for a hearing on Naxos' OSC in the New York County Supreme Court art 61 on Thursday, July 21, 2016, at 9:30 a.m. which was resolved by a stipulation of settlement on the record. The stipulation maintained the status quo from the previous hearing on June 23, 2016. Part of the stipulation of settlement included that Plaintiff agreed that Naxos could collect all of the art in dispute. The art work was housed in multiple locations including the locations that are the subject of this action.

18. Plaintiff has been alleged to have violated the Court order issued on June 27, 2016 and July 28, 2016 in the Action.

19. On July 5, 2016, attorneys Rannylin S. Dalley ("Dalley") and Thomas A. Farinella ("Farinella") travelled to Florida to inspect the artwork.

20. Cliett entered into an oral agreement with Plaintiff that she would safe guard, preserve and maintain the art work at Plaintiff's direction. On or about July 6, 2016, Farinella and Dalley met Cliett at the Florida location, 825 N. Atlantic Drive Lantana, Florida because plaintiff owns the property and used this location to house some of the art. Farinella catalogued approximately 26 works of art on the list that Naxos provided. Farinella and Dalley also observed pieces of artwork that were not on Naxos' list as they catalogued and took photos of the artwork in various rooms throughout the house and the

Lantana Self Storage Facility a/k/a Keepers Self Storage-Lantana, LLC ("Keepers") located at 1930 Lantana Road Fort Worth, Florida with Defendants Cliett and Todd H. Stephens ("Stephens"). The storage unit was filled mostly with crates. The crates were presumed to be additional works of art.

21. The hearing convened on July 21, 2016, wherein Naxos and Plaintiff entered into a second stipulation of settlement which included that the works of art in the two Florida locations would be collected. The date for collection of the Florida locations was scheduled for August 17, 18 and 19 of 2016.

22. On August 17, 2016, at approximately 9:00 a.m., as agreed in accordance with the Court order Farinella arrived at the pickup location in Lantana, Florida. Farinella met Mr. Sanichar, of Withers Bergman, who was already there with two men and a 4-door, Ford Explorer. At no time did Farinella observe a transport or moving truck that would be sufficient to pick and carry away the amount of art that was in the two Florida locations.

23. Farinella went to the front door and rang the doorbell. Farinella was met at the door by Stephens, who plainly said, "no one was getting access to the house or the storage facility and that Cliett was a tenant who had rights. She will not be turning over the art because the art work were gifts to her." Farinella asked to speak to Cliett who did not appear.

24. At about 9:15 a.m. Farinella entered the Lantana Police Department, requesting to file a criminal complaint. A few minutes later Farinella met with Officer Depolito. There is a police log indicates that the police officer surmised that this was a civil matter, as it is written in the police log they provided to Farinella on August 19, 2016.

25. Based on the police log, at approximately 10:05:14, less than one hour from the

time Farinella left 825 N. Atlantic Drive and returned with a Lantana Police Officer and no one from Withers Bergman nor Cadigan Tate was present.

26. During the morning of August 17, 2016, Farinella placed several calls to Stephens because Cliett's cell phone was disconnected. Finally, she reached out to Farinella via text message from a number he did not recognize on August 17, 2016, but to which he responded at 11:27 a.m., to have Defendant Cliett on the other end of the phone, questioning him as to the reason he is reaching out to Defendant Stephens.

27. On August 18, 2016, Farinella and Dalley had several conversations with co-counsel for Naxos, Chaya Weinberg-Brodt, where Farinella specifically asked her if she would consider issuing subpoenas for the storage unit and for Cliett. She told Farinella that he "was on his own with this strategy." The reason for this conversation was to try to assist in retrieving the art work. Farinella and Dalley were in the dark about Cliett and Stephens actions.

28. The art work in Lantana, Florida has been unlawfully withheld by Cliett and Stephens. Plaintiff has continued efforts to recover the works of art as Farinella and Dalley returned to Florida on September 9-12, 2016. A holdover proceeding was commenced against Cliett to regain possession of 825 North Atlantic Drive, Lantana Florida. Additionally, Farinella and Dalley consented to Naxos' counsels request for a judicial subpoena as to Cliett and the Lantana Storage Facility, which was a suggestion made by Farinella on August 18, 2016 to Mrs. Weinberg-Brodt. She rejected the suggestion outright.

29. Due to the egregious actions of Cliett and Stephens the art work stored in Florida could not be turned over despite Plaintiff's demands. Plaintiff has refuted all of the

allegations leveled by Naxos specifically that he "deliberately secreted hundreds of Works from his home and storage facility in Lantana, Florida."

30. Plaintiff has stated in no uncertain terms that he has demanded Cliett and Stephens to return all of the art work. He has directed Farinella and Dalley to pursue every available remedy under the law. Farinella and Dalley have hired a private investigator, commenced formal legal proceedings and have continued to search for the art work.

FIRST CAUSE OF ACTION
(Breach of Contract)
Against Defendant Stacy Cliett
and Todd Stephens

31. Plaintiffs incorporate by reference the allegations in paragraphs 1 through 30.

32. An oral Agreement, existed between the Defendant Cliett and Plaintiff that she would care for the art and the property while Plaintiff was out of town. She on her own accord, moved into the property located at 825 North Atlantic drive, Lantana, Florida ("Property").

33. Upon information and belief, Cliett employed Stephens to assist her in maintaining the storage facility. Cliett employed Stephens without Plaintiff's knowledge and/or consent. Upon information and belief he has presumably moved into the Property.

34. Defendant's Cliett materially breached the Agreement by failing to safe guard and turn over the art work as demanded by Plaintiff.

35. By reason thereof, Plaintiff has been damaged in that his rights under the Agreement have been undermined and Plaintiff has been deprived of the artwork that were being cared for by Cliett and Stephens.

SECOND CAUSE OF ACTION
(Breach of Implied Covenant of Good Faith and Fair Dealing, against Stacy Cliett and Todd H. Stephens)

36. Plaintiff repeats and realleges all of the allegations above.

37. By reason of the foregoing, there existed an oral Agreement, an implied covenant of good faith and fair dealing between Plaintiff and Cliett and Stephens.

38. Said Defendants breached the implied covenant of good faith and fair dealing by keeping the artwork for themselves and not turning the same over when demanded by Plaintiff.

39. Defendants Cliett and Stephens have resorted to verbal threats and defamed Plaintiff.

40. By reason thereof, Plaintiff has been damaged in that his rights under the oral Agreement have been undermined and Plaintiff has been deprived of the art work due and owing.

THIRD CAUSE OF ACTION
(Quantum Meruit/Unjust Enrichment, Against Stacy Cliett and Todd H. Stephens)

41. Plaintiff repeats and realleges paragraphs all of the allegations above.

42. In the alternative to the claims set forth herein, Plaintiff is entitled to recover in quantum meruit for the reasonable value of the resources he expended and to an award to prevent Defendants' unjust enrichment for converting the art works.

43. Plaintiff is entitled to fair and just compensation for the reasonable value of Plaintiff and Naxos' costs in an amount to be determined at trial, and in order to prevent Defendants' unjust enrichment, believed to be an amount measured by the market rate.

FOURTH CAUSE OF ACTION
(Promissory Estoppel, Against Defendants Stacy Cliett and Todd H. Stephens)

44. Plaintiff repeats and realleges paragraphs all of the allegations above.

45. Defendants Cliett and Stephens made unambiguous promises to Plaintiff that when demanded the art work would be turned over.

46. In accepting Defendant Cliett's assurances and agreeing to work with them via Plaintiff's attorneys and reasonably relied on the Defendant's promises.

47. Defendants, Cliett and Stephens, have deprived Plaintiff of the value which he was promised.

FIFTH CAUSE OF ACTION
(Declaratory Judgment – Title against all Defendants)

48. Plaintiff repeats and realleges all preceding paragraphs as if fully set forth herein.

49. At the time of the commencement of this action and at all times hereinafter mentioned, Plaintiff (as the owner of some of the art work and the custodian of others) unlawfully taken by Cliett and Stephens is entitled along with Naxos to the immediate possession of the art works.

50. This case involves an actual controversy over title of the art works.

51. Pursuant to 28 U.S.C. §§2201-2202 of the Federal Rules of Civil Procedure, plaintiffs are entitled to be declared the owners of the Art work located in this judicial district.

52. Plaintiffs request such relief against all Defendants.

SIXTH CAUSE OF ACTION
(Conversion - Damages and attorneys' fees for wrongful withholding and interfering with possession of the Art work against Defendants Stacy Cliett and Todd H. Stephens)

53. Plaintiff repeats and realleges all preceding paragraphs as if fully set forth herein.

54. Plaintiffs demanded the return of the art work.

55. Cliett and Stephens wrongfully and unlawfully refused to return the art work.

56. Cliett and Stephens wrongful retention caused Plaintiff to expend monies and attorney's fees in pursuing the art work as well as Naxos by refusing to return the art work to the true owners, wrongfully interfered with Plaintiffs' and Naxos' rightful possession and caused damages in the amount of the fair market value of the art work.

SEVENTH CAUSE OF ACTION
(Replevin against Defendants
Stacy Cliett and Todd H. Stephens)

57. Plaintiff repeats and realleges all preceding paragraphs as if fully set forth herein.

58. At the time of the commencement of this action and at all times hereafter mentioned, Plaintiff and Naxos were and are the owners of and entitled to immediate possession of the art work.

59. Cliett and Stephens are in possession of the artwork.

60. Cliett and Stephens detention of the art work is wrongful because the art work rightfully belongs to Plaintiff and Naxos.

61. Prior to commencement of this action, Plaintiff duly demanded possession of the Art work, but Cliett and Stephens has refused and still refuses to deliver the art work to Plaintiff and Naxos.

62. By reason of such wrongful detention of the art work by Cliett and Stephens, Plaintiffs pray for an order directing that the art work be returned to plaintiff, or in the alternative, awarding damages in an amount to be determined by the court,

together with costs and reasonable attorneys' fees.

EIGHTH CAUSE OF ACTION
(Constructive Trust)
(Recovery of proceeds flowing from and restitution of the value of stolen artworks held and concealed by all Defendants)

63. Plaintiff repeats and realleges all preceding paragraphs as if fully set forth herein.

64. Upon information and belief, Cliett and Stephens took the Art work into its custody with under a circumstance that would render it equitable for it to return such property to its rightful owner upon due demand.

65. It is just and equitable that the court impresses a constructive trust to attach to the art work from the time it entered Cliett and Stephens possession.

66. Cliett and Stephens would be unjustly enriched if permitted to retain these unique chattels or any of the benefits accruing therefrom.

67. Accordingly, each and every financial emolument accruing to Cliett and Stephens during the period of the trust should be disgorged and paid over together with prejudgment interest.

68. Plaintiff has no adequate remedy at law.

69. Permitting the Defendants Cliett and Stephens to retain the art work is unfair and unjust and in light of the totality of the circumstances warrants imposing a constructive trust under equitable principles of New York law.

70. Plaintiffs pray for an order impressing a constructive trust upon all holders and purchasers of works stolen from Plaintiff and Naxos and their agents, past and present and ordering that all chattels be returned to the rightful owners and that any income, commissions or other benefits be disgorged and paid to Plaintiff.

Prayer For Relief

WHEREFORE, Nicholas S. Zoullas, demands judgment be entered in their favor and against Defendants as follows:

a. That Mr. Zoullas be awarded damages in an amount to be determined at trial;

b. That Mr. Zoullas be awarded attorney's fees, costs and expenses;

c. That Mr. Zoullas be awarded pre-judgment and post-judgment interest; and Declaratory Judgment.

d. That Mr. Zoullas be awarded such other and further relief as the Court may deem just and proper.

Jury Demand

Mr. Zoullas demands a trial by jury of all issues as to which a jury trial may be had.

Dated: September 14, 2016
New York, New York

Respectfully submitted,

_/s/ Thomas A. Farinella____
By: Thomas A. Farinella, Esq.
Attorney for *Plaintiff(s)*
260 Madison Avenue, 8th Floor
New York, New York 10016
Telephone: (917) 319-8579
Facsimile: (646) 349-3209